IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 110 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

KESRI VIPINCHANDRA N

Appearance:

1. Special Civil Application No. 110 of 1992

MR ND GOHIL A.G.P. for Petitioner No. 1-3

MR RA MISHRA for Respondent No. 1

MR JR NANAVATI for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 01/09/2004

ORAL JUDGEMENT

1.0. The petitioner State by way of this petition has challenged the judgment and order passed by the Gujarat

Secondary Education Tribunal, Ahmedabad [hereinafter referred to as "the Tribunal"] dated 13th February, 1991 whereby the Tribunal has passed the following order :-

> "In the result, the application is allowed. It is declared that the applicant is rightly and legally appointed on a compassionate ground as per the Government Rules w.e.f. 17th October, 1988 as Junior Clerk. The opponent school is directed to prefer to the dept. salary bill of the applicant as Junior Clerk w.e.f. 17th October, 1988 till 31st January, 1991 and also assess his salaries as a Junior Clerk regularly w.e.f 1st February, 1991 and pay the same to the applicant. Both the arrears of salaries and the regular salaries shall be held admissible for the purpose of grant. The arrears shall be sanctioned by 31st March, 1991 and regular salaries should be sanctioned even month."

2.0. The short facts as they emerge from the record of the petition are that the respondent was appointed as Junior Clerk on compassionate ground as per the Government policy and Resolution. It is the case of the respondent that he has been discharging his duties as Junior Clerk regularly w.e.f. 17th October, 1988. He further submitted that since salaries have not been released under the Scheme of 100% salary grant, the petitioner is not able to pay the salary. It is the case of the respondent that though the Tribunal had ordered the higher authorities in the Education Department to take decision regarding ratification of the appointment of the respondent within one month, the same has not been taken yet and in view of that he had not been paid salaries w.e.f. 17th October, 1988.

2.1. In view of that since liberty was granted the respondent approached the Tribunal by way of Application No. 864 of 1990, with the prayer that he shall be paid salaries which are unpaid w.e.f 17th October, 1988 within stipulated time and shall also pay his regular salaries. After appreciating the material produced before it, the Tribunal allowed the Application with the aforesaid direction. Hence, this petition.

3.0. I have heard the learned advocate for the respective parties and have perused the relevant record. On going through the record, it appears that while admitting this petition, this Court has not granted any stay against the order of the Tribunal. Further, when the respondent had been working since 17th October, 1988,

it is not proper for this Court to disturb the position after 15 years and even otherwise the grounds which are considered by the Tribunal relying on the decision of the Apex Court, the Tribunal has rightly held that the appointment of the respondent on compassionate ground as per Government policy and Resolution is legal and valid and he shall be paid salaries from his initial appointment w.e.f. 17th October, 1988.

3.1. Before parting with, Mr. Gohil contended that no approval was taken before granting sanction. However, no such contention was raised before the Tribunal.

3.2. However, looking to the peculiar facts and circumstances of the case, in my opinion, no illegality is committed by the Tribunal. The findings and conclusion arrived at by the Tribunal is just and proper which does not warrant my interference in this petition. Hence, the petition is dismissed. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

/phalguni/